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律师的独立性研究

Sduty on the Independence of Lawyers

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内 容 摘 要

律师和律师制度是商品经济和民主政治发展到一定高度的产物。由于我国律师制度是从西方国家引进，因而只有短短几十年的发展历史，同时中国传统文化严重影响其薄弱的根基。伴随着社会矛盾的激增，人们对律师的期望也越来越高，社会上夸大和贬损律师形象的说法同时存在。在与律师相关的问题中，律师的独立性问题是我们直面的核心问题。这是因为律师的独立性问题事实上决定了律师的地位和发展方向、管理体制等一系列问题。

本文将从多视角对影响律师独立性地位的因素进行整体性分析，并提出维护律师独立性的可行性建议措施。

本文共分为四章。

第一章分析律师的职业属性及其独立性之保护。目前对律师职业属性的研究大多只停留在现象的表面，并没有深入研究其深层次的根源。而对其职业属性的定义将直接影响到对律师的整体定位和评价问题，从而影响其独立地位。本章将对律师职业属性进行重新界定，并针对其属性研究保护律师独立性的相应对策。

第二章阐述了律师在当今社会关系中执业环境问题，本章重点分析律师与其他法律职业者的社会关系问题以及定位。以往文章大多比较关注他们关系之间的不和谐部分，而本章将侧重分析社会关系对律师执业的有利性，同时将运用问卷调查的结果，分析律师与其他法律职业者之间的实证关系，以助于客观地分析律师的社会关系。

第三章分析了律师的管理体制问题。律师的独立性在很大程度上体现在制度层面，如律师自治问题、参政议政问题、律师自身权利的保障问题等，这些问题将直接影响其独立性。

第四章，针对以上影响律师独立性的因素，提出维护律师独立性的策略。

关键词：律师属性；影响因素；独立性

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ABSTRACT

Lawyer and lawyer system came forth when commercial economy and democracy highly developed. As our lawyer system is introduced into our country from Western countries, it has only several decades history. And the tradition culture influenced it badly. Go with the sharp increase of social conflict, people's expectation of lawyers is higher and higher. Exaggeration and depreciation of lawyers' image is cocurrent. In the all questions about lawyers, the independence of lawyers is the core, because this question factually determines the status, development direct and administrative system of lawyers.

This paper will analyze the influence factors of the independence of lawyers from multi-perspective, and will give some proposals to maintain the independence of lawyers.

The paper is divide into four chapters.

First chapter will analyze the profession attribute and the protection of independence of lawyers. Presently, most researches on the profession attribute of lawyers are skin-deep. But, in fact, the definition of the profession attribute of lawyers influences the orientation and evaluation of them. This chapter will redefine the profession attribute of lawyers and do some research on the countermeasures to protect the independence of lawyers in allusion to the profession attribute.

Second chapter will discuss lawyers' practice circumstance, and stress the analysis of the social relations between lawyers and other legal professionals and the orientation of lawyers. Previous articles mostly pay attention to the disharmonious of their relation. So this chapter will analyze the advantaged side of lawyers' social relations. And this chapter will analyze the relations between lawyers and other legal professionals from the result of my questionnaire survey,

to help analyze it impersonality.

Chapter three will analyze the administrative system of lawyers. The independence of lawyers embodies in the system to a large extent, such as the lawyers' autonomy, political participation and discussion, protection of lawyers' right, all of these influence the dependence directly.

Chapter four give some proposals to maintain the dependence of lawyers' in allusion to the factors before-mentioned.

Key words: lawyers' attribute; influence factors; dependence.

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